IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9412 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMTS

Versus

JETHABHAI VALJIBHAI RABARI

Appearance:

MR HS MUNSHAW for Petitioner

MR KS ACHARYA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/04/2001

ORAL JUDGEMENT

#. The petitioner in this petition has challenged the award dated 2-2-2000 passed by the Labour Court setting aside the order of the Disciplinary Authority dismissing the respondent from the service and substituting the

quantum of punishment by stoppage of three increments with future effect and awarding 35% backwages.

#. The brief facts are that the respondent was an employee of the petitioner, Ahmedabad Municipal Transport Service and was working as a Bus-Conductor. It was alleged that he was in the habit of remaining absent without any intimation or application frequently. Such long and unauthorized absence was a cause of concern to the petitioner, inasmuch as, the operation of the bus service was greatly affected. It is alleged that the respondent remained absent for 113 days in the year 1993 and for 96 days in the year 1994. Earlier also, on eleven occasions he remained absent without intimation. Considering his past conduct and more particularly absence in the years 1993 and 1994, two departmental enquiries were initiated, charge sheets were submitted and full-fledged enquiries were conducted. The respondent was given adequate opportunity of hearing, and after considering the entire material, it was found by the Enquiry Officer that the charge against the respondent was established. Show-cause notice for proposed punishment was given, and after hearing the respondent, he was dismissed from the service vide order dated 16-1-1996. The respondent approached the Labour Court by filing a reference. The reference was contested by the petitioner. However, ignoring the stand and contentions of the petitioner, the Labour Court set aside the order of dismissal from service and substituted it by stoppage of three increments with future effect and permitting 35% backwages to the respondent. It is this order which is under challenge in this petition.

#. Even in the second call, none appeared on behalf of the respondent. The petition was admitted on 6-9-2000 but, till date no counter affidavit has been filed. A mention was made in the first call on behalf of the respondent for adjournment on the ground that some translation has to be filed of Gujarati annexures. This mention was not made by Shri Acharya, representing the respondent but, by some advocate on his behalf. The record shows that neither counter affidavit has been filed nor any annexure in Gujarati has been filed. As such, Shri Munshaw, learned counsel for the petitioner has been heard. The impugned award has been read over before me. Certain material facts are emerging from the impugned award itself. The Labour Court did not dispute the finding that the respondent remained absent for 113 days in the year 1993 and for 96 days in the year 1994. The validity of the enquiry proceedings was not challenged by the respondent before the Labour Court.

The Labour Court specifically mention that the challenge to the enquiry proceedings was given up by the respondent and there is no complaint about violation of principles of natural justice during enquiry. The Labour Court further found that the charge of unauthorized absence for 113 days in the year 1993 and for 96 days in the year 1994 is established. The Labour Court further found that the stand of the respondent herein that he was suffering from Tuberculosis or from some other ailment was also not acceptable because no medical certificate was filed showing illness of the respondent. Even, illness of the respondent could not have prevented him from applying for medical leave to the petitioner. No such application was made. He was in the habit of remaining absent without intimation. On previous occasions also, on eleven times he remained similarly absent. The Labour Court further found that the order of dismissal passed by the Disciplinary Authority was justified, still the Labour Court modified the quantum of punishment on a ground which is unacceptable, and consequently it has to be called as perverse. If the Labour Court found that the enquiry proceedings were conducted in accordance with the principles of natural justice and enquiry proceedings were not challenged before the Labour Court and the charges were established, there was hardly any occasion for interfering with the quantum of punishment. It could not be said to be a case where punishment was exorbitant or shocking to the conscience. The ground taken by the Labour Court for modification of the sentence is that, at the time the statement of the employee was recorded, he was 53 years of age and he was yet to serve for 5 to 6 years with the petitioner herein. That could not be a ground for setting aside or modifying the punishment.

#. The petition was admitted on 6-9-2000. At that time, interim relief was granted only in respect of payment of backwages and not for reinstatement. Shri Munshaw informs that, accordingly the respondent was reinstated and he is still in service. Consequently, interest of justice would be served if the petitioner is permitted to continue in service but, the award of 35% backwages can not be sustained. It has to be quashed. Since the petitioner is going to be permitted to continue in service, stoppage of three increments also appears to be inadequate punishment. It has to be increased to stoppage of five increments with cumulative effect.

#. In view of the above discussions, the petition succeeds in part only. The award granting 35% backwages is set aside. The award directing reinstatement of the respondent is maintained. The award imposing penalty of

stoppage of three increments with future effect is modified and enhanced to stoppage of five increments with cumulative effect. No order as to cost.

April 3, 2001. [D.C. Srivastava, J.]

/sakkaf